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March 14, 2011

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Executive Director
Arizona Corporation Commission
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Phoenix, AZ 85007

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Arizona Corporation Commission

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MAR 14 2011

RE: Montezuma Rimrock Water Company, LLC
Docket No.: W-04254A-08-0361 & W-04254A-08-0362
Decision No.: 71317

DOCKETED BY

I am submitting my written opposition to a proposed amendment to Decision No. 71317 submitted by Montezuma Rimrock Water Company on January 23, 2011.

On October 21, 2009 the Commission approved Decision No. 71317. The decision authorizes MRWC to "incur long-term debt in the form of a Water Infrastructure Finance Authority of Arizona loan in an amount up to \$165,000, with a term of 20 years and on such terms and interest rates as are prevailing at the time the Water Infrastructure Finance Authority approves the loan."

Decision No. 71317 also states: "It is further ordered that the maximum interest rates used by Montezuma Rimrock Water Company, LLC to calculate the arsenic remediation surcharge it requests shall be the prime rate plus 200 basis points."

MRWC now requests "that Decision No. 71317 be amended to allow MRWC to seek funding from a private financial institution with terms and prevailing interest rates of the financial institution."

MRWC's request is bad for MRWC customers because it will likely increase water rates. And, it is bad for the general public because it poses an unnecessary threat to Montezuma Well National Monument, a section of the National Park Service and a sacred site to Native American Tribes.

MRWC has failed since at least January 1, 2006 to provide safe drinking water at a reasonable cost to its consumers. Operating under a Consent Order with the Arizona Department of Environmental Quality, MRWC is now providing bottled drinking water to its customers – a crystal clear signal that the company has failed to meet the most basic requirements of a community water system.

MRWC now seeks private financing to avoid preparing an Environmental Impact Statement on the possible impacts of its high capacity, 400-foot, Well #4 on Montezuma Well National Monument. The well is located less than 300 feet from the national monument's western boundary. Well #4 is an integral part of MRWC's proposed arsenic treatment system.

MRWC not only wants to sidestep the EIS that would provide vital information to protect the national monument, it seeks a **blank check** from the Commission to borrow funds at an unspecified interest rate with unspecified terms to construct an arsenic treatment plant that would continue to rely on Well #4.

Neither the company nor the Commission staff provide the Commission with a shred of analysis of how such an action would impact water rates, MRWC's already weak financial condition and possible exposure to MRWC customers in the event of a loan default.

This is an outrageous overreach by the company that should and must be rejected.

My opposition is based on several points:

1. Contrary to ACC staff's assertion in its Feb. 10, 2011 filing with Docket Control praising MRWC's "overall cooperation with state agencies", MRWC has demonstrated a longstanding disregard for state and county laws and regulations.

A. MRWC refused to sign a compliance agreement with ADEQ related to arsenic violations in its water supply three times in 2009. ADEQ finally forced the issue last summer and MRWC and ADEQ signed a Consent Order requiring MRWC to provide alternative drinking water to its customers. Customers must make an appointment with MRWC to obtain drinking water in one-gallon jugs. This has been ongoing since July 2010. ~~(Exhibit 1)~~ JCO

B. MRWC illegally installed Well No. 4 in 2006 on a residential parcel in Yavapai County without prior county approval. The parcel violates standards set in the Yavapai County Water Code. Citizen intervention forced three public hearings before the Yavapai County Planning Commission and the Yavapai County Board of Supervisors in early 2010. The board approved a use permit for a commercial well on the residential parcel on March 15, 2010. However, the use permit requires MRWC to show within one year that "the use is operating in compliance with all applicable local, state and federal regulations". There is substantial evidence that Well No. 4 is not in compliance.

C. MRWC is in violation of Commission Order 71317 that required the company to have a certificate of Approval of Construction for Well #4 by December 31, 2009. At a March 2, 2010 public hearing, the Commission rejected the company's request to extend this deadline to June 30, 2010 and kept in place the Dec. 31, 2009 deadline. The Commission also instructed staff to prepare an Order to Show Cause hearing. Staff has refused to do so.

D. On March 11, 2011, MRWC connected Well No. 4, which has not obtained ADEQ's certificate of Approval of Construction, to its main water distribution line and installed a shutoff valve. I personally observed and photographed this action. (Exhibit 2) I have filed a written complaint with ADEQ requesting an investigation. (Exhibit 3)

2. MRWC is seeking the modification to avoid preparing an Environmental Impact Statement related to the potential impact of operating a high capacity, 400-foot, commercial well in close proximity to Montezuma Well National Monument. The company is asking the Commission to ignore evidence that the operation of Well No. 4 poses a significant threat to the water resources at Montezuma Well National Monument.

A. After reviewing MRWC's Environmental Information Document submitted last fall, and consulting with a private engineering firm and the U.S. Environmental Protection Agency, the Water Infrastructure Financing Authority of Arizona determined that an Environmental Impact Statement is necessary before it would issue the loan approved in Decision 71317.

B. The Commission has a duty to protect the public interest and the environment in its decisions. Clearly, allowing MRWC to sidestep the WIFA loan process in order to avoid preparing an Environmental Impact Statement designed to protect Montezuma Well National Monument from possible damage from ground water depletion caused by the operation of MRWC's Well #4, is not in the best public interest nor does it protect a significant national resource.

3. It is unclear whether MRWC is seeking elimination of the following requirement that was included in Decision 71317, which states: "It is further ordered that the maximum interest rates used by Montezuma Rimrock Water Company, LLC to calculate the arsenic remediation surcharge it requests shall be the prime rate plus 200 basis points."

A. In their letters to Docket Control, neither staff nor MRWC, provide any analysis on the cost and terms of private financing. Nor do they provide any information on the impact on water rates, the financial impact on the company and whether the "prime rate plus 200 basis points" would remain the basis for the remediation surcharge. The company's request and staff's letter in support is woefully lacking in even the most basic financial analysis of a private loan.

B. In addition, staff and MRWC provide no information on how a private loan would be secured. What happens if MRWC defaults on a private loan? Would customers be held responsible? We don't know.

4. Staff fails to present to the Commission an alternative that would provide MRWC's customers lower rates and safe water while eliminating any threat to Montezuma Well National Monument. The staff recommended on Feb. 15, 2005 that the water system that is now part of MRWC's service territory be assigned to the Arizona Water Company.

A. In Decision 67583, paragraph 33, staff stated that customers "could better be served" by allowing AWC (Arizona Water Company) to purchase the water company from the Montezuma Estates Property Owner's Association.

"AWC's Rimrock system is within 600 feet of Applicant's (MRWC) system; AWC has a strong financial history; AWC has a new 350 gpm well which can be

interconnected with Applicant's system and used to provide services to the Company's service area; and AWC already has a Commission approved plan for arsenic treatment."

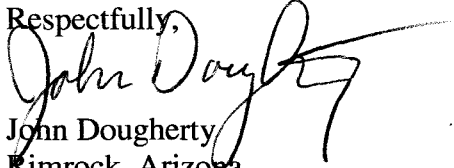
B. Since Decision 67583, AWC has installed an arsenic treatment system at its Well #4 in Rimrock. AWC has also extended a 12-inch pipeline along Beaver Creek Road to within approximately 2,000 feet of the MRWC connection near Kramer Driver and Beaver Creek Road.

C. AWC's published water rates are substantially lower than MRWC, which will further increase if and when the arsenic treatment system is constructed. And those rates may be even higher now that MRWC has rejected the subsidized WIFA loan and is seeking approval to go to the private market.

It is in the best interests of MRWC customers, the general public, and Montezuma Well National Monument for the commission to reject, or simply take no action, on MRWC's request to modify Decision 71317 to allow the company to obtain private financing.

Instead, the Commission should set an Order to Show Cause Hearing to consider revoking MRWC's Certificate of Convenience and Necessity to operate a community water system and assign the service area to a company that has the financial capacity and management skill to deliver clean drinking water at reasonable rates while protecting the rare resources of Montezuma Well National Monument.

Respectfully,


John Dougherty
Rimrock, Arizona

002-1710-9433



Exhibit
#2

John Dougherty <jd.investigativemedia@gmail.com>

MRWC connects Well No. 4 to water distribution system

3 messages

John Dougherty <jd.investigativemedia@gmail.com>

Fri, Mar 11, 2011 at 8:33 PM

To: Burns.vivian@azdeq.gov

Dear Ms. Burns,

On Friday, March 11, 2011 at approximately 11 a.m. I arrived at my property at 5225 North Bentley Drive, Rimrock, Arizona, 86335.

I immediately noticed a front end loader on a neighboring property where Montezuma Rimrock Water Company installed what it calls Well #4.

Outside of the fence surrounding the Well #4 property there was a large pile of dirt.

I walked over to the site and observed a deep hole that was dug in the public right-of-way. At the bottom of the hole there was a black pipe approximately 4 inches in diameter leading from the parcel where Well #4 is located. The black pipe was connected to a brass shutoff valve that was embedded in MRWC's main water distribution line.

Moments later, Montezuma Rimrock Water Company owner Patsy Olsen drove up and we had a short discussion. I told her it appeared that she was connecting Well #4 to MRWC's water distribution system. She denied that had occurred, but offered no explanation as to why a pipe leading from the parcel where Well #4 is located had been connected to the company's main water distribution line.

I remained near the well site as contractors placed a riser around the shutoff valve and proceeded to back fill the hole.

I have attached photos I shot of the water connection, Ms. Olsen on the site standing next to the connection, the construction company installing a riser and back filling the hole and an overall shot of the property.

As you know, MRWC's Well No. 4 has **not** received ADEQ's Certificate of Approval of Construction.

ADEQ has stated the AOC certificate would not be issued until MRWC installs and fully permits an arsenic treatment facility.

MRWC has not installed the arsenic treatment plant as of March 11, 2011.

MRWC appears to be waiting to receive funding from the Water Infrastructure Financing Authority to pay for construction of the arsenic treatment plant and an associated 2,000-foot pipeline. WIFA, however, suspended funding for the arsenic treatment facility in February 2010 because of environmental concerns. WIFA is preparing an Environmental Assessment. The assessment has not yet been made public.

In addition, the Yavapai County Board of Supervisors' use permit to install a commercial well on the residential parcel is about to expire. The Board of Supervisors approved the use permit for the well site on March 15, 2010 with the stipulation that MRWC have all permits in place within in one year. MRWC has failed to do so.

And, MRWC is in violation of an Arizona Corporation Commission order that required it to have the certificate of Approval of Construction for Well #4 by December 31, 2009.

Given these aggravating circumstances, I respectfully request that ADEQ immediately investigate and make public the circumstances under which MRWC connected a well that has not yet obtained AOC certification to its water distribution system.

If this connection was done illegally or violates any ADEQ regulation, I request all penalties be applied to their fullest extent.

In addition, if this well was illegally connected to the MRWC water system, I request that ADEQ order MRWC to disconnect the well from the distribution system until it obtains all the required permits to legally connect the well.

If there is a reason as to why this connection is not a violation of ADEQ rules and regulations or state law, please provide the public a written explanation at the soonest possible date.

Sincerely,

John Dougherty
602-710-9433

4 attachments



patsyolsen.jpg
252K



waterconnection.jpg
372K

Exhibit # 3